

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SANDRA VALDEZ,) 1:05-cv-00326-AWI-SMS
) 1:05-cv-01025-AWI-SMS
Plaintiff,)
) ORDER GRANTING PLAINTIFF'S MOTION
v.) TO CONSOLIDATE CASES 1:05-cv-
) 00326-AWI-SMS AND 1:05-cv-01025-
CITY OF WOODLAKE, et al.,) AWI-SMS FOR ALL PURPOSES
)
Defendants.) ORDER DIRECTING THE CLERK
) TO CLOSE ACTION NUMBER 1:05-cv-
) 01025-AWI-SMS

SUSANNA LUCIA ORDONEZ,)
) ORDER DIRECTING THE PARTIES TO
Plaintiff,) FILE IN THE FUTURE ALL DOCUMENTS
) IN ACTION NUMBER 1:05-cv-00326-
v.) AWI-SMS
)
CITY OF WOODLAKE, et al.,)
)
Defendants.)
_____)

Plaintiff Sandra Valdez moves to consolidate her case, action number 1:05-cv-00326-AWI-SMS, with action number 1:05-cv-01025-AWI-SMS by motion filed on December 28, 2005, in action number 1:05-cv-00326-AWI-SMS, which was accompanied by a memorandum, declaration, and exhibit consisting of a preliminary hearing transcript. Defendant City of Woodlake filed opposition on January 24, 2006, in action number 1:05-cv-00326-AWI-SMS, including a memorandum, declaration, and exhibit. Plaintiff filed

1 a reply on February 1, 2006. No opposition or notice of non-
2 opposition was received from Defendant Williams, although the
3 electronic proof of service indicates that the motion was served
4 on Williams' counsel. By separate order the Court has vacated the
5 hearing on the motion and deemed the matter submitted for
6 decision.

7 I. Background

8 In action number 1:05-cv-00326-AWI-SMS, Plaintiff Sandra
9 Valdez alleges in the second amended complaint filed on August
10 17, 2005, claims against Defendant Richard Williams, formerly a
11 Woodlake police officer, and his former employer, the police
12 department and city of Woodlake¹, including violation of 42
13 U.S.C. § 1983 (unreasonable search and seizure under the Fourth
14 and Fourteenth Amendments); Cal. Const., art. I, § 13
15 (unreasonable search and seizure); intentional infliction of
16 emotional distress; negligent infliction of emotional distress;
17 false imprisonment; sexual battery; Cal. Civ. Code § 52.1;
18 negligence; and Cal. Civ. Code § 52.4 (gender violence). It is
19 alleged that the defendants acted pursuant to city policy and
20 custom, and that Defendant City negligently hired, trained, and
21 supervised Defendant Williams regarding detention and searching
22 of suspects. Plaintiff seeks general, punitive, and statutory
23 damages.

24 In action number 1:05-cv-01025-AWI-SMS, Plaintiff Susanna
25 Lucia Ordonez sues Defendants Williams, Woodlake Police
26

27 ¹ Defendant states that it was erroneously sued as the Woodlake Police
28 Department. The docket lists the Tulare County District Attorneys Office as a
party defendant, but it does not appear that this party has been served or has
appeared in the action.

Department, and the City of Woodlake, asserting the same type of claims as in the Valdez action except that there is no sexual battery claim in the Ordonez action. The allegations in Ordonez contain additional factual allegations, consisting of references to the previous unreasonable search of Plaintiff Valdez, notification to the Defendant City of the Valdez claim, and Defendant City's failure to correct the problem. Plaintiff Ordonez seeks the same type of relief as Plaintiff Valdez.

In the two answer filed by Defendant Williams, Defendant denied many of the factual allegations but admitted that Defendant Williams was acting in the course and scope of his employment; Defendants asserted defenses of justification and probable cause; justification based on various bases, including Cal. Pen. Code § 836, Cal. Health & Saf. Code § 11550 (Valdez), Cal. Veh. Code § 22351 (Ordonez),² privilege and public or private necessity, and the need to effectuate a lawful detention and arrest; absolute federal immunity; qualified immunity; immunity under Cal. Govt. Code sections 820.2, 820.4, 820.6, 802.8, 821 and Penal Code sections 836 and 847; reasonable belief in lawful conduct; failure to state a claim; unclean hands; laches; estoppel; failure to mitigate damages; statute of limitations; Plaintiff's sole fault; wilful misconduct, and fault and misconduct of others. Defendant Woodlake's answers both deny that Defendant Williams acted in the course and scope of his employment; Woodlake asserts, among other defenses, absolute and

² The only distinction between the sets of defenses asserted in the two cases is the different specific statutes upon which the claim of justification is based.

1 qualified immunities, some of the same statutory immunities,
2 assumption of the risk, failure of Plaintiff to mitigate, and
3 statute of limitations.

4 As to the facts, according to the complaints and the
5 transcript of the preliminary hearing (Tr.) in the state criminal
6 case against Defendant Williams, lodged by Plaintiff Valdez, both
7 cases involved threats by Defendant Williams before undertaking a
8 search, searches that were not situated to be recorded by police
9 video equipment, searches which commenced as searches concerning
10 one thing (stolen property in Valdez's case and a traffic
11 violation in Ordonez's case) but progressed into searches for
12 narcotics and associated evidence, searches of vaginal areas
13 and/or breasts of female persons in sites other than a police
14 facility by the male officer, threatening statements by the
15 officer apparently designed to induce the females not to seek to
16 have a female officer undertake the searches, and inappropriate
17 comments by the officer.

18 Valdez's search occurred on May 26, 2004, in her bedroom.
19 (Tr. 158-9.) Plaintiff Valdez testified at the preliminary
20 hearing that she had had previous contact with Defendant Williams
21 on several occasions; once he helped her put transmission fluid
22 in her car when her vehicle was not registered and then followed
23 her home; once he arrested her boyfriend at her house and then
24 returned to apologize to her about it; once he gave her two sons
25 Easter baskets and then called later to identify himself as the
26 donor; and once he jokingly approached her about her registration
27 being expired. On May 26, 2004, Defendant Williams arrived in
28 connection with an investigation of stolen property, which had

1 been found in Plaintiff's car during a time that Plaintiff was
2 not using it. Plaintiff Valdez told him that she had not used
3 drugs for two days and did not have any. While the two were alone
4 in her bedroom, the officer searched inside her overalls, had her
5 disrobe, spread her labia, and squat; he opened her vagina with
6 his fingers. She was arrested by another officer twenty minutes
7 later for being under the influence. The charges were dismissed.
8 (Tr. 158-292.)

9 Ordonez's search occurred on August 20, 2004 between
10 Williams' patrol car and a house after Defendant Williams
11 effected a traffic stop of a vehicle driven by Ordonez's fiancé
12 and in which Ordonez was a passenger (Tr. 7, 10.) Williams said
13 he wanted to search for drugs because Ordonez had made hand
14 movements during the stop. He administered a field sobriety test,
15 ascertained she was wearing no underwear, looked down her front
16 with a flashlight when she pulled her waistband out at his
17 instruction, patted the waistband, put two fingers in the
18 waistband, appeared to see her private part, mentioned tattoos
19 located close to the line of her pubic hair, and told her he was
20 going to give her a break and would not give them a ticket. (Tr.
21 13-17.)

22 Another set of potential witnesses consists of women who
23 were also stopped and searched by Defendant Williams on the night
24 of August 20, 2004, or at about 3:00 a.m. on August 21, 2004,
25 namely Cassandra Minchew, Trisha Simons, Kristin Buik, Jessica
26 Saleh, and Jaylyn Johnson. Minchew testified at the preliminary
27 hearing regarding a traffic stop, which developed into roadside
28 sobriety tests and a search for drugs involving making Minchew

1 shake out her bra and unzip her pants, shining a flashlight down
2 Minchew's waistband and touching her with his finger while moving
3 her panties to the side in front, exposing her pubic hair,
4 ultimately inspecting her bare breast with a flashlight and then
5 commenting that it was interesting, and asking her not to mention
6 it to anyone. No citation or ticket was given. (Tr. 36-80.)
7 Simons gave similar testimony with respect to having to shake out
8 her bra and pull out her waistband so that the officer could look
9 down inside her pants and inside her underpants. (Tr. 81-91.)
10 Saleh gave similar testimony regarding shaking her bra and having
11 the officer touch her when he was manipulating her waistband.
12 (Tr. 97-114.) Johnson testified to shaking her bra out and
13 manipulating her overalls and underwear for the officer, but not
14 being touched. (Tr. 115-35.) Buik testified to a similar search,
15 and the officer's touching her a couple of inches below her
16 navel. (Tr. 135-57.)

17 II. Consolidation

18 Fed. R. Civ. P. 42(a) provides:

19 When actions involving a common question of law
20 or fact are pending before the court, it may order
21 a joint hearing or trial of any or all the matters
22 in issue in the actions; it may order all the
actions consolidated; and it may make such orders
concerning proceedings therein as may tend to avoid
unnecessary costs or delay.

23 A trial court has broad discretion to consolidate in whole or in
24 part cases pending in the same district. Investors Research Co.
25 v. United States District Court for the Central District of
26 California, 877 F.2d 777 (9th Cir. 1989). However, it is
27 necessary that the actions have a common question of law or fact.
28 Enterprise Bank v. Saettele, 21 F.3d 233, 235 (8th Cir. 1994).

1 The purpose of consolidation is not only to enhance efficiency of
2 the trial court by avoiding unnecessary duplication of evidence
3 and procedures, but also to avoid inconsistent adjudications.

4 E.E.O.C. v. HBE Corp., 135 F.3d 543, 551 (8th Cir. 1998).

5 Consolidation is inappropriate if it leads to inefficiency,
6 inconvenience, or unfair prejudice to a party. Fed. R. Civ. P.
7 42(b). The Court should weigh the interests of judicial
8 convenience against any potential for delay, confusion, and
9 prejudice caused by consolidation. Southwest Marine, Inc. v.
10 Triple A Machine Shop, Inc. 720 F.Supp. 805, 807 (N.D. Cal.
11 1989).

12 Here, the claims in the two suits are exactly the same legal
13 claims except that a claim for sexual battery is present in the
14 Valdez suit; the defendants are the same; and the defenses are
15 substantially the same. Both suits thus involve common issues of
16 law, for example, the reasonableness of a male officer's searches
17 of females involving intrusions of similar but slightly varying
18 extents; the Defendants' intentions; the reasonableness of
19 Defendant Williams' conduct and of Defendant City's training,
20 hiring, and supervision of Defendant Williams; scope of
21 employment; justification; immunity; and so forth.

22 The cases also present common questions of fact, such as
23 Defendant Williams' intent. Plaintiff argues, and Defendant does
24 not dispute, that evidence regarding the two (or perhaps three)
25 different search scenarios will be cross-admissible on the issue
26 of intent, an element of the intentional torts alleged in both
27 cases.

28 Consolidation of the actions will reduce expenditure of

1 resources by the Court and the parties.

2 Defendant objects that the searches are widely divergent in
3 their characteristics, that Plaintiff Valdez had previous contact
4 with Defendant Williams whereas Plaintiff Ordonez did not,
5 Plaintiff Valdez was arrested later while Ordonez was not, and
6 only Plaintiff Valdez alleges sexual battery, an intentional
7 tort. The Court finds that these distinctions are slight factual
8 differences that do not disturb what are otherwise two cases
9 presented common legal issues and common as well as similar
10 questions of fact.

11 Defendant objects that the jury will be confused by the
12 presence of a sexual battery claim in one case but not in the
13 other. However, the legal issues presented by such a claim appear
14 to be straightforward; it does not appear that there would be a
15 likelihood of confusion or that clearly instructing the jury
16 would not suffice to separate the issues for consideration. Cf.
17 Southwest Marine, Inc. v. Triple A Mach. Shop, Inc., 720 F.Supp.
18 805, 807 (N.D.Cal. 1989). Defendants argue that they will suffer
19 prejudice, citing United States v. Kanuer, 149 F.2d 519 (7th Cir.
20 1945 (approving consolidation of many actions against separate
21 defendants for fraudulent acquisition of a certificate of
22 naturalization where there were common issues arising from the
23 fact that all defendants were members of the German-American
24 Bund); Tucker v. Arthur Anderson & Co., 73 F.R.D. 316 (D.C.N.Y.
25 1976) (disapproving consolidation of an action against an
26 accounting firm to recover for alleged securities violations with
27 an action brought by purchasers of debt securities of
28 corporation's wholly owned subsidiary against same accounting

1 firm where in addition to different issues of materiality, there
2 was a strong possibility of prejudice to a party due to delay
3 which would be required in one of the actions, and additional
4 confusion would arise because a jury demand had been made in only
5 one action); and Arroyo v. Chardon, 90 F.R.D. 603 (D. Puerto Rico
6 1989) (declining to consolidate nine cases involving separate
7 claimants, all of whom alleged they had been demoted from
8 supervisory positions within the department of education for
9 political reasons, despite similarity of legal issues because of
10 possible prejudice to the defendants due to differences in each
11 plaintiff's factual circumstances, the number of witnesses, the
12 number of cases, and the absence of any appreciable saving of
13 time or expenses). Here, there are fewer factual differences,
14 plaintiffs, and factual situations; the law is not particularly
15 complex. There is no significant risk of undue prejudice or
16 confusion. The two cases are both at early stages of development,
17 and both appear to involve jury demands. Significant savings of
18 resources would result from consolidation.

19 The Court exercises its discretion to grant Plaintiff's
20 motion for consolidation.

21 III. Procedure

22 Generally a motion to consolidate involves noticing the
23 consolidation motion in all cases sought to be consolidated.
24 Plaintiff here filed a notice of motion only in the Valdez case.
25 However, it is clear that the motion is intended to affect both
26 cases; further, all parties have received notice of the motion.
27 No party has objected to the form of the motion. Further, the
28 Court may grant consolidation of actions on its own motion. In re

1 Adams Apple, Inc., 829 F.2d 1484, 1487 (9th Cir.1987). Therefore,
2 plaintiff's procedural deviation should not prevent
3 consolidation.

4 IV. Disposition

5 Accordingly, it IS ORDERED that

6 1) Plaintiff's motion to consolidate actions number 1:05-cv-
7 00326-AWI-SMS AND 1:05-cv-01025-AWI-SMS for all purposes IS
8 GRANTED, and the actions ARE CONSOLIDATED for all purposes; and

9 2. The parties ARE DIRECTED TO FILE all future papers in
10 action number 1:05-cv-00326-AWI-SMS with a caption of Valdez v.
11 City of Woodlake, et al.; and

12 3. The Clerk of Court IS DIRECTED to file all future papers
13 in action number 1:05-cv-00326-AWI-SMS, and to close action
14 number 1:05-cv-01025-AWI-SMS.

15
16 IT IS SO ORDERED.

17 **Dated: February 8, 2006**
18 icido3

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE